
School Land Dedication / Fees in Lieu

Draft Report

June 2002

Durango 9-R School District

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Executive Summary

Introduction

Local Governments are statutorily enabled to require land dedications or fee's in lieu for the provision of school lands when new development occurs. This report represents a calculation of a fair and equitable fee structure for assessing new residential development a share of its impacts to the school district's capital facility needs. The intent of this document is to provide in one place, nearly all of the information needed to adopt a new schedule of land dedication / fees in lieu for the Durango 9-R School district.

Methodology

The methodology for determining land dedications or fees in lieu resides in:, 1) determining the students generated by housing type (e.g. single family homes, apartments, etc.) and by grade level (i.e. elementary, middle, high), 2) calculating the acreages utilized per student, per grade level, and 3) assessing current real estate prices on a per acre basis for potential school sites. The methodology used in this report is similar or identical to those used in many other school districts throughout Colorado and the Nation.¹

Existing Fees

The existing land dedication / fee in lieu regimes of both La Plata County and the City of Durango have a number of problems that warrant adopting a new, streamlined, and equitable dedication/fee schedule. The existing fee structures possess the following problems: they do not reflect current real estate prices, existing student generation rates, and current school capital facilities needs. In addition they may be difficult to calculate and based on methodologies that are not commonly used.

New Fees

A new fee structure uniformly adopted by La Plata County and the City of Durango based on current capital facilities needs of the Durango 9-R school district, current real estate prices, and current student generation rates will yield equitable and adequate land dedication/fees based on housing type. The proposed fee structure follows:

Single Family Homes (duplex, triplex, & townhomes)	\$ 982
Multi-Family Homes (any 4+ attached units)	\$ 302
Mobile Homes (in mobile home parks)	\$ 359

¹ A partial list of school districts using similar or identical methodologies include: Montrose, Ridgway, Thompson, Weld, Brighton, Aspen, Ouray, , Douglas, and Elizabeth.

Report

Introduction & Background

The purpose of School Land Dedication / Fees in Lieu is to ensure the availability of school sites and land areas for school facilities necessary to serve future residents.

Definitions

The analysis within this report relies heavily on standard assessor data – La-Plata county assessor information was used for the 9-R school district. The following definitions represent unit type definitions as they are presented in the Assessors Reference Library: Administration Manual². Although the fee structure has been collapsed into three divisions (single family, multi-family attached, mobile homes) to be streamlined and more easily administered, all of the definitions are given independently and the collapsed (i.e. multi-family) category is defined in the summary at the end of this section.

Single Family

Land and structures used as a residential dwelling unit by one family and other improvements related to residential use are classified under this subclass. The subclass includes town homes and factory-built³ residential structures. It also includes individual dwelling units of duplexes, triplexes, and planned unit developments when the parcel is split by the filing of a re-subdivision plat. It does not include condominiums.

Multi-Family

Land and structures designed as residential dwellings which include four (4) + living units are classified under this subclass. Apartments, row-houses, boarding houses, dormitories, and nursing or rest homes are typical multi-unit dwellings in this subclass. (for the purposes of administration of the fee, all attached units possessing four (4) or more units are considered multi-family regardless of ownership categorization).

Condominiums

Residential condominiums are listed under this subclass. All other condominiums are classified according to their use. A condominium is an individual air space unit together with an undivided interest in the common elements. A condominium declaration and plat which defines the character, duration, rights, obligations,

² 2002 – Available online-at the Colorado Department of Local Affairs Website, Department of Property Taxation

³ Factory built residential structures are built to Colorado uniform building codes, the same codes used in the construction of stick built homes. Factory built residential structures can be identified by a silver plate located under the kitchen sink. The outriggers and I-beams are removed when the structure is placed on a permanent foundation.

limitations of ownership, and physical location are filed with the clerk and recorder. A condominium project could range from a duplex to a four-plex residential property which has undergone condominium conversion to a large condominium project, involving many buildings and several plat filings.

Mobile Home

Manufactured homes (mobile homes⁴) which are titled through the Division of Motor Vehicles and have a residential use are classified in this subclass. Properties where both the land and the manufactured home are owned by the same owner, or the manufactured home is situated on individually owned parcels of land, or the manufactured home is located in a manufactured home park are included in this subclass. Mobile homes will only be classified as such in this fee structure if they are located within a mobile home park.

Summary of Definitions

For the purposes of the application of fees single family residences include town homes, duplexes, and triplexes. Multi-family units include all developments with four or more attached units including condominiums. Mobile homes are as per the definition above. **Figure A** demonstrates the classifications.

Figure A.

Single Family	Detached single family residences, town homes, duplexes, and tri-plexes
Multi-Family	4+ unit attached structures including apartments and condominiums
Mobile Homes	Mobile homes (in mobile home parks)

Rationale

New residential subdivisions produce both new students and, often overlooked, the potential for new students. New residential units (i.e. houses, apartments, mobile homes, condos, etc.) are known to generate school aged children and it is a simple matter to examine existing census data to determine at what average rates school-aged children are being generated. While it is sometimes argued that certain development types (e.g. luxury or resort area development) are currently generating students at lower rates than typical residential developments,⁵ it is important to

⁴ Manufacturers stopped producing mobile homes in 1976. This type of structure is now called manufactured homes. Manufactured homes are built to HUD standards and can be identified by a red tag usually located on the back of the structure. If the structure is shipped in more than one piece, each piece will have a red tag. If the red plate is missing, there should be an 8 1/2 x 11 inch paper "data plate", located near the water heater or furnace, which gives the specifications of the structure. The outriggers and I-beams are left in place when manufactured homes (mobile homes) are parked. The axles and wheels may or may not be removed. For purposes of property taxation, the terms mobile home and manufactured home are used synonymously.

⁵ This may sometimes be true in the present due to the demographic characteristics of resort or luxury homeowners (i.e. older and perhaps retired)

understand that once undeveloped land is converted to a residential structure (e.g. a single family home) that unit possesses the potential to harbor student generating families in the future, even if it does not currently. Consequently all units are assessed based on the conversion of use and not on present uses.

School land dedications and fees in lieu have been an element of Colorado State Statutes since 1972. A number of districts employ these dedications and a partial list of municipalities and existing fees is listed in **figure B** for comparison.

Figure B.⁶

Aurora	\$ 4000
Avon	\$ 1450
Glenwood Springs	\$ 2202
Montrose	\$ 488
Commerce City	\$ 619

42 of 207 municipalities exact some sort of dedication or fee in lieu for school lands. The fees-in-lieu range in price from a low of \$150 to \$4000 per housing unit.

Legislative Authority

Colorado State Statute 30-28-133 mandated that all Colorado counties must create a county planning commission that would further “develop, propose, and recommend subdivision regulations” and that the board of county commissioners “...shall adopt and enforce...” subdivision regulations. The authority for Colorado counties to assess dedications for schools either in the form of land or cash is clear.

The pertinent section of the state statute follows:

- (4)** Subdivision regulations adopted by the board of county commissioners pursuant to this section shall also include, as a minimum, provisions governing the following matters:
- (a) Sites and land areas for schools and parks when such are reasonably necessary to serve the proposed subdivision and the future residents thereof. Such provisions may include:
 - (I) Reservation of such sites and land areas, for acquisition by the county;
 - (II) Dedication of the sites and land areas to the county, to a school district, or to the public or, in lieu thereof, payment of a sum of money not exceeding the fair market value of the sites and land areas or a combination of such dedication and such payment; except that the value of the combination shall not exceed the fair market value of the sites and

⁶ Fees in lieu as of October 2000 as reported by the Colorado Municipal League in *Paying for Growth. Impact Fees Under Senate Bill 15* 2002 Colorado Municipal League.

land areas. Any sums, when required, or moneys to be paid to the board of county commissioners pursuant to this paragraph (a) may, if approved by the board of county commissioners, be paid directly to a school district. If the sites and land areas are dedicated to the county, to a school district, or the public, the board of county commissioners may, at the request of the affected entity, sell the land. The subdivider shall have a right of first refusal to purchase all or a portion of any land dedicated by the subdivider to a county, school district, or other public entity pursuant to this subparagraph (II) before the land is sold, transferred, or conveyed to any party other than a school district. Prior to selling or otherwise transferring ownership of the land, the county, school district, or other public entity selling the land shall provide written notice to the subdivider of its intention to sell or transfer ownership of all or any portion of the land. The subdivider shall then have sixty days to provide written notice to the county, school district, or other public entity of the subdivider's interest in purchasing all or a portion of the land to be sold. The purchase of the land by the subdivider shall be upon such terms and conditions and for such consideration as the parties may mutually agree; however, in no event shall the purchase price exceed the fair market value of the land at the time the subdivider dedicated the land to the county, school district, or other public entity. Any right of first refusal created pursuant to this subparagraph (II) shall expire twenty years from the date the land was dedicated by the subdivider to a county, school district, or other public entity. Except as provided in subsection (4.3) of this section, any such sums, when required, or moneys paid to the board of county commissioners from the sale of the dedicated sites and land areas shall be held by the board of county commissioners:

- (A) For the acquisition of reasonably necessary sites and land areas or for other capital outlay purposes for schools or parks;
 - (B) For the development of the sites and land areas for park purposes; or
 - (C) For growth-related planning functions by school districts for educational purposes;
- (III) Dedication of such sites and land areas for the use and benefit of the owners and future owners in the proposed subdivision;
- (a) Standards and technical procedures applicable to storm drainage plans and related designs, in order to ensure proper drainage ways, which may require, in the opinion of the board of county commissioners, detention facilities which may be dedicated to the county or the public, as are deemed necessary to control, as nearly as possible, storm waters generated exclusively within a subdivision from a one hundred year storm which are in excess of the historic runoff volume of storm water from the same land area in its undeveloped and unimproved condition;
 - (b) Standards and technical procedures applicable to sanitary sewer plans and designs, including soil percolation testing and required

percolation rates and site design standards for on-lot sewage disposal systems when applicable;

(c) Standards and technical procedures applicable to water systems.

(4.3) After final approval of a subdivision plan or plat and receipt of dedications of sites and land areas or payments in lieu thereof required pursuant to subparagraph (II) of paragraph (a) of subsection (4) of this section, the board of county commissioners shall give written notification to the appropriate school districts and local government entities. Following such notice, a school district or local government entity may request periodic transfer on no longer than an annual basis of such land or moneys to the district or entity. When a board of county commissioners determines that the school district or local government entity has demonstrated a need for the land or moneys based on a long-range capital plan or evidence of the impact of the subdivision on the district or entity, or both, it shall periodically transfer on no longer than an annual basis the land or moneys to the appropriate school district or local government entity. The district or entity shall use the transferred land or moneys only for a purpose authorized by sub-subparagraphs (A) to (C) of subparagraph (II) of paragraph (a) of subsection (4) of this section. Any moneys received by the board of county commissioners that are transferred pursuant to this subsection (4.3) are not county revenues for purposes of paragraph (d) of subsection (7) of section 20 of article X of the state constitution.

Basic authority for land dedications at the municipal level may be construed from State Statutes 29-20, 24-67, and 31-23, as a home-rule city additional authority may be found in the municipal code and charter (Durango Code of Ordinances Chapter 27, Article I).

Methodology

Generating defensible school land dedication fees is simple in the grand sense but complicated when examined stepwise. This section outlines the general steps utilized to develop the fee structure as well as detail the methodology on a step-by-step basis.

Detailed methodological disclosure

Sample

Using La Plata County Assessor codes RPI analyst was first able to build a data base of all existing units in the Durango 9-R school district. RPI then joined this data base to an existing list of active students in the 9-R district. The data bases were joined based on physical addresses. A significant amount of data base “scrubbing” was necessary to account for minor inconsistencies between the data bases (primarily misspellings of addresses).

In total, 14,337 units were listed in the assessor data base. However, it was assumed that some units were naturally missing from the assessor data base due to typical coding and query errors. Consequently, for the final analysis RPI used 2000 census unit counts in the school district (15,518). This discrepancy had no effect in this stage of the analysis. There were a total of 4987 students listed in Durango 9-R's "active" data base. Due to a number of difficulties in joining disparate data bases RPI was able to achieve 2815 joins between the data bases – a 56% join rate. RPI examined and found no bias in the non-joining records.

Student Generation Rates

Once the join was complete RPI was able to isolate students both by grade (i.e. elementary, middle, and high school) and by housing unit types (single family residential, multifamily, and mobile home). Proportionate allocations were made to each of the housing unit types first by type and then further refined by the grade level of the students. These proportions were then extrapolated and swollen to the known number of school aged children in the district (as of the 2000 census). These proportions were then used to generate potential student generation rates by unit type.

After assigning student generation rates it was necessary to account for the total number of units by type within the district (e.g. how many single family residences). Because of inherent imperfections in assessor data, RPI utilized census and building permit counts to establish proportions for unit types county-wide. These proportions were then applied to the total number of units known to be in the district (2000 Census) and extrapolated and swollen to establish total unit counts, by type, within the Durango 9-R school district.

Finally, the total number of students by grade were divided into the total number of unit types to establish the average number of students generated by unit type (i.e. the student generation rate). The final detailed numbers are consistent with gross generation calculations done district wide including all unit types.

Facility Requirements

After assessing student generation rates RPI utilized facility requirements provided by the school district to determine the quantity of land needed per student for new school facilities. **Figure C** demonstrates these assumptions for Durango 9-R.

Figure C.

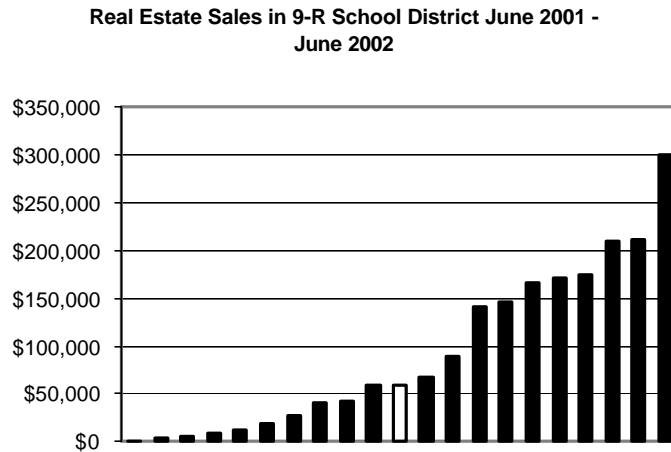
School Type	Total Acreage Required for Facility	Student Capacity	Acres Needed per Student
Elementary	15	350	0.04
Middle	30	650	0.05
High	45	1800	0.03

Real Estate Analysis

Determining the price per acre for land is a critical component for establishing a price for a fee-in-lieu payment for the dedication schedule. Rather than adjust each fee on a case by case basis it is typical for governments to simply adopt a flat rate, justified with recent sales of property and update the land cost every two years.

RPI analyzed all current real estate sales within the Durango 9-R school district, but limited the analysis to townships where the district will likely locate future facilities. The townships include: 5665, 5597, and 5669. Sales data of vacant land were collected from June 2001 to June 2002 in parcels from 1 - 40 acres. Twenty-one total sales were evaluated. From this analysis, a final, flat, per acre price was derived. Because the distribution of sales was positively skewed⁷, RPI utilized the median rather than the mean per acre sale price in the interest of generating a more conservative and accurate per acre cost. The white bar in **figure D** represents the median.

Figure D.



Calculations

The final calculation is based on the following formula:

Grade Elementary + Grade Middle School + Grade High School	$(G_1 * AR_2) * (LC_3)$ $(G_1 * AR_2) * (LC_3)$ $(G_1 * AR_2) * (LC_3)$	G_1 = Generation Rate AR_2 = Per Student Acreage Requirement LC_3 = Land Cost per Acre $AR_2 = (G_1 * FA)$ FA = Total Facility Acreage Requirements
=	FEE for UNIT TYPE	

⁷ I.e. the mean is a higher value than the median.

Fee Schedule

Using the methodology outlined above, the following fee schedule is recommended. Fees should be applied to housing unit types as defined in the *Definitions* section of this report.

Figure E.

	Generation Rate (G ₁)	Total Facility Acreage Requirements (FA) ⁸	Acreage Requirement (AR ₂) ⁹	Land Cost per Acre (LC ₃)	FEE
Single Family					
Elementary	0.17	0.043	0.007	\$59,091	427
Middle	0.12	0.046	0.005	\$59,091	317
High	0.16	0.025	0.004	\$59,091	239
TOTAL SINGLE FAMILY					\$ 982
Multi-Family (any attached)					
Elementary	0.06	0.04	0.002	\$59,091	140
Middle	0.04	0.05	0.002	\$59,091	105
High	0.04	0.03	0.001	\$59,091	57
TOTAL MULTI-FAMILY					\$ 302
Mobile Home					
Elementary	0.08	0.04	0.003	\$59,091	196
Middle	0.04	0.05	0.002	\$59,091	107
High	0.04	0.03	0.001	\$59,091	56
TOTAL MOBILE HOME					\$ 359

Existing Fee Structures

La Plata County Fee Structure

La Plata County's fee structure has not been recently updated to reflect increases in property values over time. \$150 per lot does not reflect either current land purchase prices nor current capital facilities planning and needs of the school district. For example, if a 1500 unit subdivision were proposed generating approximately 480 students (i.e. .32 students per unit * 1500) the current fee schedule

La Plata County's current fee structure assumes \$11,250 per acre purchase prices for school lands.

⁸ Per student

⁹ Per student, per unit

would garner only \$225,000 in revenue ; although the 480 new students would require nearly 20 additional acres of land to house the buildings to school them. The current fee structure assumes a per-acre real estate cost of approximately \$11,250.

Fees found in Appendix A of the La Plata County Land Use Code referenced in section § 82. **Figure F** shows the existing La Plata County fee schedule.

Figure F.

School fees, Durango School District	\$150.00 per lot (over 1)
School fees, Bayfield School District	\$90.00 per lot (over 1)
School fees, Ignacio School District	\$60.00 per lot (over 1)

City of Durango Fee Structure

The City of Durango's existing fee schedule possesses several disadvantages that would suggest adopting a transparent and fixed fee schedule such as the one recommended in this report.

The City of Durango's fee schedule is complicated by the need to examine the school districts existing capital facilities plan (excluding bonded debt) to calculate school facilities fees. This will necessarily need to be re-calculated every time a new subdivision is proposed.

Another issue with the City of Durango's fee structure is that its student generation numbers are based on a twenty year old census count of units (i.e. 1980). Nor does the schedule account for differing student generation rates by unit type. Consequently, some units will be overcharged while others will be undercharged.

Finally, because the current City of Durango fee schedule is based on *projected costs* of future capital facilities needs of the district, and not on land costs it more closely resembles an impact fee than a land dedication or fee in lieu.

The full text of the City of Durango's School Land Dedication follows:

10-5-13 Public areas, sites, parks, and open spaces. The city may require open spaces suitably located and of adequate size for utilities, rights-of-way, parks, playgrounds, and/or recreational purposes. Outstanding natural and cultural features such as scenic spots, watercourses and historic sites shall be reserved for preservation purposes, if possible. Such spaces may be dedicated to the public or be established by covenants, conditions and restrictions (CC&Rs) for common use by the occupants.....

(d) School land dedication:

(1) The standards and formula for dedication of school land shall be as follows:

a. Where a school facility has been designated in a master plan for school facilities adopted by the city or when a school site has been designated by School District 9-R through a policy plan or other device, and such site is to be located in whole or in part within a proposed residential project, the applicant shall offer, for dedication to School District 9-R through the city, the land designated for the school facility.

1. The amount of acreage required for dedication shall be determined upon a standard of four hundred (400) students per school, a standard school site of fourteen (14) acres and a per-unit student occupancy of seven-tenths (0.7) students per dwelling unit.

b. If additional land is required beyond the amount obligated by the applicant, the amount of land may be reserved for a school site for a period of three (3) years within which time School District 9-R may purchase the reserved land at its value at the time of recordation of the first final plat of the subdivision.

1. If not purchased within that time period, the land may be subdivided or otherwise disposed of pursuant to the wishes of the landowner, and provided such disposal is in satisfaction of the provisions of this section (d).

c. Determination of the applicability of this section regarding the need for dedication of land shall be made by the city council, upon recommendation of the planning commission.

(2) Conveyance of dedicated school land shall be as follows:

a. When land is to be conveyed to meet the requirements of this section (d), the conveyance shall be by dedication to the city. Such dedication shall be made at the time a final plat, which contains the proposed school site, is filed.

1. The city shall convey the property to School District 9-R upon demand, [and] shall not be conveyed until School District 9-R is ready to commence construction of a school facility.

b. Upon determination and notification by School District 9-R to the city that the dedicated site will not be necessary for school purposes, the following procedure shall be followed:

1. An offer of first refusal to the original landowner shall be made at the then-current appraised value.

2. If the offer or right of first refusal is not exercised by the original landowner, the property shall be offered to the city

for acquisition and development for public use, with an acquisition price to be paid at the then-current appraised value.

3. If neither of the foregoing options are exercised, the school site shall be sold by the city. The net proceeds of the sale, after deducting expenses of the sale, shall be deposited with the city in the same account in which fees paid in lieu of land dedication are held pursuant to the terms of this section (d).

(3) If there is no school facility designated in a master plan or by School District 9-R which falls within the proposed residential development, the applicant shall, in lieu of dedicating land, pay a fee which shall be used for the purchase of land, the construction of facilities, or other capital improvement needs within School District 9-R.

a. Such fees shall be based upon projected capital expenditures within School District 9-R. Such fees shall be calculated in the following manner:

1. Projected capital expenditures for the next five (5) years shall be averaged in order to establish an annual value.
2. Capital improvements proposed for payments through bond shall not be included in these calculations.
3. Per-student allocations shall be derived by division of the annual value of the current student count (grades K-12).
4. A per-household (dwelling unit) allocation shall then be derived by multiplication of the student allocation by the assumed student occupancy factor which is determined by the federal census or other appropriate census. The value determined from the 1980 census being seven-tenths (0.7) children per household.
5. The amount of the fee and the basis should be reviewed annually by the city and School District 9-R, and if appropriate, shall be adjusted. The amount of the fee shall be formally established by resolution of the city council.
6. Payment of fees shall be made prior to recording a final plat for a subdivision or the issuance of a building permit.

b. The provisions of this section (3) shall apply at the time of filing of a final subdivision plat under the following circumstances:

1. An implied consent agreement is in force between the landowners or subdivider and the city;

2. The property in question is being annexed to the city; or

3. The property in question is within the jurisdiction of the city.

(4) An amendment to a final approval or a recorded subdivision plat shall require additional fees, in accordance with this section, to be paid only if that amendment results in an increase in the number of dwelling units, and only the incremental difference (increase) shall be calculated for the payment of additional fees.¹⁰

Administration

Who gets money, how, where It goes, criteria for land dedications, collections (i.e. at building permit or subdivision).

Timing

Fees should be collected prior to final plat approval or, where no subdivision is involved prior to building permit issuance. It is advisable that the city address the land dedication issue at annexation and that the county address it at preliminary plat approval or before.

Payment

Ideally land dedications or payments of cash in lieu should be paid directly to the school district (pending approval of the Board of County Commissioner CRS 30-28-133 (4) (a) (II) rather than through the local government entity.

Criteria

RPI recommends that the school district maintain control over the decision to accept land dedications or demand cash in lieu. Some districts establish criteria to make this determination, although this is not necessary – the district may desire to maintain authority to make decisions on a case-by-case basis. It should be noted that CRS 30-28-133 (4) (a) (II) stipulates that the sub-divider has the right of first refusal to purchase the land for a period of twenty years after the land has been acquired by the School District. The sub-divider is allowed under this statute to purchase the land for no more than the fair market value of the parcel at the time the land was subdivided.

Exemptions

Exempting properties from the fee structure (except in obvious cases such as nursing homes) is not recommended. If projects are to be exempted, RPI recommends that provisions be made to cover the land dedication /fee in lieu charges through other

¹⁰ Ord. No. 1995-23, § 11, 10-17-95

means when appropriate.¹¹ Failing to do so may create equity questions and promote a challenge of the fee structure. Exempted developments might include affordable housing, indigent accommodations, nursing homes, or others as explicitly defined by the County or Municipality.

Updating

Regularly updating a land dedication /fee in lieu schedule is a critical component of maintaining an effective fee structure. One component of the fee should be regularly updated: 1) the real estate (i.e. cost per acre) should be updated approximately every two years and this may most conveniently coincide with assessor appraisals.

Other components for the fee structure that should be updated include: student generation rates, facility needs, total students, and total unit types.

Student generation rates should be updated when there is reason to believe that radical demographic shifts have taken place in the district. These shifts may be the result of natural migration patterns, significant new development projects, or changes in the districts borders. For example, a single, very large subdivision that provides relatively low cost housing that is marketed toward young first time homeowners may dramatically increase the overall student generation of single family homes – the fee schedule should then reflect this new reality.

Facility needs may change over time as the result of evolving school facility standards. Or, more simply, there may be a shift from the current general planning standard either up or down regarding the acreages required for certain school types.

Total student numbers will naturally be updated when student generation rates are revised. However, there may be reason to increase this number independent of a full revision of the generation rates. This revision may be logical if student numbers are increasing at a higher rate than actual units (i.e. residential structures). This situation might arise if there were a transition out of the district boundary of retirement aged people who's dwellings are then occupied by families with school aged children. This occurrence is easily checked by examining a relative spike in student populations and comparing them with existing/historical building permits.

Finally, the unit type mix may need to be revised along with the other numbers if a trend is discovered making the current allocation of unit types (i.e. single family, multifamily, etc...) obsolete. This may occur for example – if it is discovered that few if any multifamily units are being built in district boundaries, or alternately, that multi-family units are dominating the new construction market. Changing the unit mix is really a component of an entire fee revision rather than an independent variable in the equations. (see **Attachment III** for a recommended update schedule)

¹¹ Meaning that the waived fees should be paid by the government entity granting the exemption.

Alternatives

Although the Colorado State legislature codified the prohibition of school impact fees in 1996, a handful of local governments have adopted a creative mechanism whereby local governments, the development community, and the school district collaborate to create a voluntary system to ensure the adequate provision of capital facilities revenue for school districts in the face of new development. The details of this arrangement are discussed briefly below. If this system were to be negotiated in the Durango 9-R School district, much of the analysis utilized in this report might be used to construct an equitable schedule of fees. The only significant difference being that future capital facilities needs required by the district would be used rather than formulas regarding acreages and real estate analysis.

Capital Investment Fee Mechanism

Although school impact fees have been specifically prohibited by Colorado State Statute 22-54-102, a voluntary system has been established in Colorado (e.g. Brighton School District) that is currently functioning albeit contingent on the voluntary cooperation of several parties.

This mechanism, which may be plausible in the 9-R district, is guided by the following logic.

A 501(c)(3) foundation is established with a board of directors containing representatives from the County Commission, City Council, the development community, and the School Board. The District then outlines its capital facilities planning needs and associated costs. Student generation rates and per unit contributions are calculated (similar to the costs outlined in this document) and voluntary contributions are established on a per unit basis. Essentially, these “contributions” represent impact fees that are voluntarily given to the school district and held in trust by the non-profit corporation to be expended as needed.

This approach rests on two principles. First that the school district can show that new developments will require the need for additional facilities and that the local governments will deny subdivision requests if that subdivision decreases the schools existing service level (i.e. inadequate facilities to serve new students). Second, that there is enough consensus among the development community to willingly assent to voluntary contributions to the school district based on the calculation methodology adopted by the district.

While the advantages to generating a system such as this may be great, the logistics of organizing such a system can be significant. Moreover, the system might be easily upset by a single developer who was not party to the original agreement or who has decided that the fees are too high etc; likewise elected government officials may cycle into office that will not refuse subdivision requests based on the facility standards set by the school district.

Attachment – I. Draft IGA

The following IGA may serve as general template between the school District, La Plata County, and the City of Durango.

Please note that this is presented as a general template only and that modifications will be necessary to meet local conditions and preferences.

INTERGOVERNMENTAL AGREEMENT CONCERNING FAIR CONTRIBUTIONS FOR PUBLIC SCHOOL SITES BETWEEN THE CITY OF DURANGO, LA PLATA COUNTY, AND THE DURANGO SCHOOL DISTRICT 9-R

THIS AGREEMENT is entered into by and between the _____(City) (County) of _____(City), a (municipal corporation) (Colorado County), and the Durango School District 9-R (School District), a political subdivision of the State of Colorado, to be effective as of the ____th day of _____, (Effective Date) (revised _____ day of _____, _____).

RECITALS

A. Local governments are encouraged and authorized to cooperate or contract with other units of government, pursuant to C.R.S. § 29-20-105, for the purpose of planning or regulating the development of land, including, but not limited to, the joint exercise of planning, zoning, subdivision, building, and related regulations.

B. The (City)(County) and School District have cooperated with respect to managing the orderly growth of the community by identifying potential public school site locations.

C. Growth in residential land development and the construction of new residential dwellings in the (City)(County) necessitates the acquisition of additional public school capital facilities to accommodate the increases in the student population. Requiring land dedication or conveyance for public school capital facilities, or payments in-lieu of land dedication or conveyance for public school sites, (hereinafter collectively referred to as "Fair Contribution for Public School Sites"), will provide a portion of the resources to meet such demand.

D. To provide adequate public school capital facilities to serve the (City)(County) residents of newly constructed residential dwelling units, it is appropriate that the School District and (City)(County) cooperate in the area of public school capital facilities acquisition by use of Fair Contribution for Public School Sites.

E. Requiring Fair Contribution for Public School Sites in a manner appropriate for an efficiently functioning (City)(County) and to ensure that new development does not negatively impact the provision of services.

F. (The municipal charter grants the City the power of local self-government and home rule)(Colorado State Statues grant the County), and it is a reasonable exercise of this power to require Fair Contribution for Public School capital facilities as a method of ensuring that new residential

construction and residential development bear a proportionate share of the cost of public school capital facilities acquisition necessary to accommodate the educational service capacity demands of the residents who will be living in the new dwelling units.

G. Requiring Fair Contribution for Public School Sites for new residential construction and development is reasonable and necessary to protect, enhance, and preserve the public health, safety, and welfare of the (City's)(County's) citizens.

H. The (City)(County) and School District, upon consideration of the impacts of new residential construction and residential land development on the ability of the School District to provide public school facilities in the (City)(County), agree that it is in the best interests of the citizens of the (City)(County) to mutually enter into an intergovernmental agreement for the purpose of providing for Fair Contribution for Public School Sites, as provided in this Agreement.

I. The (City)(County) and School District do hereby define the rights and obligations of each entity with respect to planning for new public school capital facilities and Fair Contribution for Public School Sites.

AGREEMENT

NOW, THEREFORE, in consideration of the objectives and policies expressed in the recitals and the mutual promises contained in this Agreement, the ((City)(County) and School District agree as follows:

1. School Facility Coordination and Development Referrals

a. The School District, insofar as is feasible, shall consult with and advise the (City)(County) in writing in advance of public school facility acquisition and site development.

b. The (City)(County) shall refer to the School District all residential land development applications for review and comment concerning impact of the development on the School District and the adequacy of public school sites and facilities. The (City)(County) will consider the School District's comments in conjunction with the review and processing of each individual residential development application, and will implement land dedication for public school facilities or payments in-lieu of land dedication for public school facilities consistent with this Agreement and the (municipal)(county) code then in effect. If a nonresidential land development application is filed with the (City)(County) that may have influence or effect on property owned by or activities of the School District, the (City)(County) shall also refer information pertaining to that application to the School District for review and comment. The School District agrees to promptly review the referred development application and promptly submit its comments, recommendations, and requests to the (City)(County).

2. Methodology

a. Contemporaneous with the Effective Date and the effective date of the (City)(County) (municipal)(county) code amendment requiring Fair Contribution for Public School Sites, the (City)(County) agrees to enforce such municipal code amendment as a precondition to the lawfully authorized construction of new residential dwelling units not otherwise exempted under Section 5 below.

b. The School District has adopted a methodology dated June, 2002, to determine Fair Contribution for Public School Sites for three categories of dwelling units. The parties agree the Methodology, attached and incorporated herein as Exhibit A, has been developed in a manner so as

to fairly apportion the cost of acquiring public school facilities made necessary by new residential development.

c. As part of the Methodology, the School District has adopted planning standards related to facility enrollment capacities, public school site acreage requirements, and student yields for each of three types of residential dwellings (single family homes, multi-family units, , and mobile homes). The (City)(County) and the School District agree that the Methodology is reasonable and the approved then-current Methodology shall apply to new residential construction within the (City)(County). The Methodology shall be the basis for computing Fair Contribution for Public School Sites for new residential construction. The (City)(County) and School District agree that the Methodology adopted by the School District shall be periodically reviewed and revised to reflect the current standards and conditions within the School District.

d. Unless and until modified by the parties, the Methodology and its supplementary background materials shall include, but shall not be limited to, the following factors:

(1) School planning standards which establish the student yields and technical and educational specifications for facilities for each category of school facility (elementary, middle, and high school levels), consistent with the policy of the Board of Education of the School District;

(2) The capacity (City)(County) demand for each category of school facility resulting from each category of residential dwelling (single family, multifamily units, condos/townhouses, and mobile homes);

(3) The means for determining the per acre fair market value of land for each type of residential dwelling; and

(4) The procedure for calculating Fair Contribution for Public School Sites required and applicable to each type of residential dwelling.

e. The Methodology shall be updated periodically as conditions warrant by the mutual consent of the (City)(County) and the School District. A copy of the updated Methodology shall be furnished to the (City)(County) within 30 days after its adoption by the School District. The (City)(County) shall hold a public hearing before revising the Methodology.

3. Fair Contribution for Public School Sites Requirement

a. As Fair Contribution for Public School Sites, any person or entity, as part of an applicable residential land development application shall dedicate or convey land for a public school facility to the School District, or in the event the dedication of land is not deemed feasible or in the best interests of the School District as determined by the Superintendent or designee, the School District may require a payment in lieu of land dedication or conveyance to the School District. The manner and amount of either type of Fair Contribution for Public School Sites shall be as stated in this Agreement and the incorporated Methodology. This shall not preclude the School District and any person or entity from mutually agreeing to resolve the issue of Fair Contribution for Public School Sites in a manner other than as stated above.

b. If the Fair Contribution for Public School Sites includes the dedication of land, according to paragraph 3.a. above, the (City)(County) agrees before recording of the final plat to require proof that the dedication has been made to the School District in a manner and on terms satisfactory to the School District and in accordance with the following requirements:

(1) The person or entity has conveyed to the School District by general warranty deed, title to the land slated for dedication, which title is to be free and clear of all liens, encumbrances, and exceptions (except those approved in writing by the School District), including, without limitation, real property taxes, which will be prorated to the date of conveyance or

dedication. The person or entity shall also enter into a contract for the sale and purchase of real property containing customary terms for the land which is being conveyed to or purchased by the School District.

(2) At the time of dedication or conveyance, the person or entity shall provide a title insurance commitment and policy in an amount equal to the fair market value of the dedicated property. At the appropriate time, not later than the issuance of the first building permit for the land development project, the person or entity shall also pay or provide for the payment of one-half of street development costs, and shall either provide, or pay or make provision for the payment of the costs associated with making improvements for water, sewer, and utilities stubbed to the site, and overlot grading of the dedicated land. The person or entity shall also have furnished any off-site easements which the School District needs to develop the site.

(3) The lands being dedicated or conveyed to the School District shall be located and configured as directed by the School District.

(4) The person or entity conveying the land to the School District shall satisfy the (City) (County)'s water rights requirements prior to conveying the property to the School District

(5) In addition to conveyed or dedicated lands, the School District shall have the right to purchase adjacent lands owned by the developer at its fair market value so that the dedicated or conveyed and purchased lands together form a contiguous parcel which meets the School District's land area requirements listed in Exhibit A.

c. The (City)(County) agrees that before issuing a building permit for any residential dwelling unit not otherwise exempted under Section 5 below, it will require proof that the Fair Contribution for Public School Sites, according to paragraph 3.a. or 3.b. above, has been received by the School District. The Superintendent of the School District, or the Superintendent's Designee, shall provide such proof in a timely manner to the (City)(County) Manager of the (City)(County), or the (City)(County) Manager's designee.

d. Nothing contained in this Agreement shall preclude the School District from commenting to the (City)(County) upon the adequacy of public school sites or facilities, necessary in its judgment, to meet the impact of the development project.

4. Use of Fair Contribution for Public School Sites

a. The School District shall hold or deposit in trust for public school capital facilities all funds it receives as Fair Contribution for Public School Sites, and all funds it may receive from the sale of land dedicated or conveyed as Fair Contribution for Public School Sites. The School District shall meet all requirements of C.R.S. §§ 29-1-801 to -803, if applicable. The School District shall be solely responsible for each Fair Contribution for Public School Sites it receives. No Fair Contribution for Public School Sites shall constitute revenue of the (City)(County) under the provisions of Article X, Section 20 of the Colorado Constitution.

b. The School District shall use all funds it receives as Fair Contribution for Public School capital facilities. Subject to the limitations in this Agreement, the time for, nature, method, and extent of each public school site acquisition or other expenditures covered herein shall be within the sole discretion of the School District.

c. Except as otherwise provided in this Agreement, any funds received as Fair Contribution for Public School Sites the School District has not used for acquisition or development of public school capital facilities within twenty years of collection it shall tender for refund, with interest earned and credited according to C.R.S. §§ 29-1-801 to -803, to the person who made the Fair

Contribution for Public School Sites. The School District shall give written notice by first-class mail to the person who made the Fair Contribution for Public School Sites at his or her address as reflected in the records maintained by the School District. If the person does not file a written claim for refund of the funds with the School District within 90 day's of the mailing of such notice, the Fair Contribution for Public School Sites refund shall be retained by the School District.

5. Exemptions From Fair Contribution for Public School Sites

a. The following uses within the (City)(County)'s boundaries shall be excepted from Fair Contribution for Public School Sites:

- (1) Construction of any nonresidential building or structure;
- (2) Alteration, replacement or expansion of any legally existing building or structure with a comparable new building or structure which does not increase the number of residential dwelling units;
- (3) Construction of any building or structure for limited term stay or for long term assisted living, including, but not limited to, bed and breakfast establishments, boarding or rooming houses, family-care homes, group-care homes, halfway houses, nursing homes, or hospices, except where such building or structure will be used primarily to house school aged children; and
- (4) Construction of any residential building or structure classified as housing for older persons, pursuant to the Federal Fair Housing Act in effect.

6. Annual Report, Accounting, and Audit

a. The School District shall submit an annual report on or before March 1 of each year to the (City)(County) describing the School District's use of the Fair Contribution for Public School Sites funds during the preceding fiscal year. This report shall also include:

- (1) A review of the assumptions and data upon which the Methodology is based, including student generation ratios, and attendance area boundaries;
- (2) Statutory changes or changes in the Methodology, including the School Planning Standards, and in School District policies related to acquisition or construction of school sites and facilities; and
- (3) Any recommended modifications to Fair Contribution for Public School Sites land areas or amounts included in the Methodology.

b. After receipt of the report, the (City)(County) shall review it, considering those matters listed in the previous subsection, and complete its review within 60 days of receipt.

c. The School District shall establish and maintain an accounting system to ensure that all Fair Contribution for Public School Sites funds are used according to this Agreement.

d. The School District shall cause an audit to be performed annually of the Fair Contribution for Public School Sites funds it receives, uses or expends under this Agreement. The audit shall be conducted according to the generally accepted accounting principles for governmental entities. A copy of said audit shall be furnished to the (City)(County). The cost of the audit shall be paid for by the School District. The audit may be part of the School District's annual audit.

7. **Term of Agreement**

The term of this Agreement shall commence on the Effective Date, and continue for a period of ten years thereafter unless renewed or extended by the mutual consent of the (City)(County) and the School District. However, any party may terminate this Agreement, at any time and for any reason, upon one year written notice to the other parties.

8. **Miscellaneous Provisions**

a. Faith and Credit. No party shall extend the faith or credit of the other to any third person or entity.

b. Amendments. This Agreement may be amended only by mutual agreement of the parties and shall be evidenced by a written instrument authorized and executed with the same formality as accorded this Agreement.

c. Notice. Any notice required by this Agreement shall be in writing. If such notice is hand delivered or personally served, it shall be effective immediately upon such delivery or service. If given by mail, it shall be certified with return receipt requested and addressed to the following addresses:

Notice given by mail shall be effective upon receipt.

d. Governing Law. This Agreement and the rights and obligations of the parties hereto shall be interpreted and construed in accordance with the laws of the State of Colorado.

e. Severability. If this Agreement, or any portion of it, is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding, shall not affect the validity of the remaining portions of the Agreement.

f. Indemnification. The parties agree to cooperate in the defense of any legal action that may be brought contesting the validity of this Agreement or the implementing ordinances. Each party to the litigation shall be responsible for a pro-rata share of the costs and attorneys' fees incurred in such defense. Any monetary judgment shall be allocated in accordance with the judgment, except that the School District shall be solely responsible for any required refund of contributions it has received. Nothing contained in this Agreement shall constitute any waiver by the (City)(County) or the School District of the provisions of the Colorado Governmental Immunity Act or other applicable immunity defense. This provision shall survive termination of the Agreement, and be enforceable until all claims are precluded by statutes of limitation.

g. Provisions Construed as to Fair Meaning. The provisions of this Agreement shall be construed as to their fair meaning, and not for or against any party based upon any attributes to such party of the source of the language in question.

h. Compliance with Ordinances and Regulations. Each of the parties hereto shall enact or adopt or, if necessary, repeal or amend such ordinances, rules, regulations or policies as are necessary to implement and complement this Agreement. This Agreement shall be administered

consistent with all current and future (City)(County) laws, rules, charters, ordinances and regulations concerning land dedication or conveyance for public school sites, or payment in-lieu of land dedication or conveyance for public school sites.

i. No Implied Representations. No representations, warranties or certifications, express or implied, shall exist as between the parties, except as specifically stated in this Agreement.

j. No Third Party Beneficiaries. None of the terms conditions or covenants in this Agreement shall give or allow any claim, benefit, or right of action by any third person not a party hereto. Any person other than the (City)(County) or the School District receiving services or benefits under this Agreement shall be only an incidental beneficiary.

k. Financial Obligations. This Agreement shall not be deemed a pledge of the credit of the (City)(County) or the School District, or a collection or payment guarantee by the (City)(County) to the School District. Nothing in this Agreement shall be construed to create a multiple-fiscal year direct or indirect municipal debt or municipal financial obligation.

l. Integrated Agreement and Amendments. This Agreement is an integration of the entire understanding of the parties with respect to the matters stated herein. The parties shall only amend this Agreement in writing with the proper official signatures attached thereto.

m. Waiver. No waiver of any breach or default under this Agreement shall be a waiver of any other or subsequent breach or default

IN WITNESS WHEREOF, the parties hereto have executed this Agreement which shall be in full force and effect the day and year first above written.

(CITY)(COUNTY) OF

By: _____

ATTEST: _____
(City)(County) Clerk Date

APPROVED AS TO LEGAL FORM:

(City)(County) Attorney

DURANGO DISTRICT 9-R

By: _____
President Board of Education

ATTEST:

Secretary Date

APPROVED AS TO LEGAL FORM:

School District Attorney

Attachment – II. Draft Code Language

A. General Rules.

- a. Applicants shall identify and provide community facilities during the subdivision review process. During the preliminary subdivision plat review the city shall refer for comment proposed subdivision plats to applicable agencies.
- b. In order to facilitate the future acquisition of *land* areas required to implement this Development Code, the city may require that *land* be reserved, dedicated, or donated for the future acquisition and development of schools, parks, playgrounds, and other public uses and purposes.
- c. The city shall have the discretion to accept any offered donation or *dedication of land* area.
- d. When the subdivision generates a need for public improvements, including public school sites, the applicant shall make fair contribution to the cost, construction, or provision of such improvements that is acceptable to the service provider, including fair contribution for public school sites acceptable to the school district. (See Section “Intergovernmental Agreement Concerning Fair Contributions for Public School Sites Between the City of Durango and the Durango 9-R School District).

B. Fair Contribution for Public School Sites.

1. Applicability/Dedication or Payment In-Lieu Required.

- a. Unless exempt under subsection (C)(2) below, applicants shall provide proof that the school district received fair contribution for public school sites prior to final plat approval.
- b. If a subdivision plat includes land identified in the () (master)(comprehensive) plan for a public school site, the applicant shall dedicate such land as fair contribution for public school sites, provided such dedication is acceptable to the school district. Prior to dedication, the applicant shall provide street access to the subject land and install all utilities.
- c. The school district may, at its discretion, accept a payment in-lieu of land dedication for public school sites.

2. Exemptions from Contribution Requirement. Subject to school district approval, the following uses are exempt from the fair contribution for public school sites requirement:

- a. Construction of any nonresidential building or structure;
- b. Alteration, replacement or expansion of any legally existing building or structure with a comparable new building or structure which does not increase the number of residential dwelling units;
- c. Construction of any building or structure for limited term stay or for long-term assisted living, including, but not limited to, bed and breakfast

establishments, boarding or rooming houses, family-care homes, group-care homes, halfway houses, hotels, motels, nursing homes, or hospices; and

- d. Construction of any residential building or structure classified as housing for older persons, under the Federal Fair Housing Act then in effect
2. "Fair Contribution" Defined. "Fair contribution for public school sites" means land dedication or conveyance for public school sites, or payments in-lieu of land dedication or conveyance for public school sites, that will provide a portion of the land for public school sites that growth in residential development and construction of residential dwellings necessitate.

Attachment –III. Recommended Fee Update Schedule

The following chart indicates a suggested update time schedule for critical fee components for a ten year period.

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Real Estate (per acre costs)			X		X		X		X		x
Student Generation Rates						X					X
Facilities Requirements						X					X
Student Count			X		X		X		X		X

Attachment –IV. Parcel Map of Durango 9-R School District

